IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 24094 of 2004

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Dated:25th October 2005.

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Between:

Paper Clippings of Eanadu Telugu daily Newpaper and an English Daily Newspaper both dated 17-12-2004 under the captions “Narakayatana” and “The line between life and death could be just a rally”.

..... PETITIONER

AND

P.Janardhan Reddy, Member of Legislative Assembly, Khairatabad Constituency, Hyderabad and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

W.P.NO.24094 OF 2005

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is taken up *suo motu* on the basis of a news item published on 17.12.2004 in the various news papers in circulation in Hyderabad city.

The substance of the news item is that on 16.12.2004 a massive rally was organized by one of the members of the legislative assembly to submit a memorandum to the Hon'ble Chief Minister regarding certain problems, the details of which may not be necessary for the present purpose. As a consequence, admittedly, the traffic was thrown out of gear at a few places in Hyderabad city, mostly prominent and busy areas, that resulted in lot of inconvenience to the inhabitants of the city, the commuting public in general. It is also reported in the news papers that a patient who was being rushed from Warangal to Hyderabad on a medical emergency by an ambulance breathed his last as he could not be taken to the hospital in the traffic congestion. It appears that ambulance was stranded in the congestion.

All the respondents are served. Counter affidavits are filed. Sri M.Niranjan Reddy, the learned *Amicus Curiae* appointed by this Court brought to our notice that the right to take a procession, be it a religious procession or a political procession, is recognized in this country as a part of the Fundamental Right guaranteed under Article 19 (1) (b) of the Constitution of India in the various decisions of the Supreme Court reported in ***HIMATLAL K. SHAH*** v. ***COMMISSIONER OF POLICE, AHMEDABAD AND ANOTHER*** and ***SHAIK PEER BUX v. KALANDI PATI*** and therefore such processions can only be subject to reasonable restrictions to be imposed by law under Clause 3 of Article 19 of the Constitution of India in the interest of the sovereignty and integrity of India and order. The learned Amicus Curiae further submitted that the Hyderabad City Police Act
(for short "the Act") enables the Commission of City Police, Hyderabad to give orders regulating processions.

On behalf of the State, Sri A.Satya Prasad, Special Governemnt Pleader, submitted that subsequent to the event dated 16.12.2004, the Commissioner of Police in exercise of his power under Section 22 of the Act passed orders dated 31.12.2004 by which the Commissioner of Police banned all rallies/procession and dharnas, except in the two routes specified in the said proceedings. The relevant portion of the Notification reads as follows:

> " Whereas it has been universally acknowledged that rallies and dharnas are way of healthy protests in a democracy and just because these democratic protests are allowed they should not paralyze the city public life.
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> Whereas; freedom of movement and expressions though guaranteed in the constitution are subject to reasonable restriction keeping in view the public safety and order.
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> Whereas; rallies and processions in the main arteries of the roads have paralysed the public life and throwing traffic out of gear, causing enormous inconvenience to road users particularly school going children and sick who require urgent medical assistance. Such processions/rallies and dharnas are adversely affecting the serenity and academic environs of educational institutions, ecology and polluting the public environs, adversely affecting health, commercial activity and public order.
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> Whereas; keeping in view the above circumstances I V.Dinesh Reddy, IPS, Commissioner of Police, Twin Cities of Hyderabad & Secunderabad, by virtue of powers conferred upon me, under rule 21(B) read with rule 22(D) of Hyderabad City Police Act, hereby order to ban all rallies/procession and dharnas, except on the following routes in public interest and safety.
>
> 1. Goshala to Indira Park via Motilal Nehru Nagar, Divisional LIC office, and NTR Stadium.
>
> 2. Ramnagar to Sundariah Park (Baghlingampally) via VST Cross Roads.

This order will come into force from 1-1-2005.

Whereas; this order will not preclude movement for funeral and cultural events with prior permission."

The learned Government Pleader, therefore, submitted that every appropriate measure would be taken by the respondents to avoid in future the possibility of there being any disturbance to the normal flow of traffic in the city of Hyderabad.

Coming to the events that occurred, which resulted in taking up of the present writ petition, it is stated in the counter-affidavit filed by the Deputy Commissioner of Police, Traffic-II, Hyderabad, dated 19.01.2005 that one Mr.G.Niranjan, Secretary of A.P. Congress Committee, submitted an application seeking permission to take out a rally from Rajiv Gandhi Statue to A.P. Legislative Assembly via Somajiguda, Punjagutta X Road, E?rramanzil, Khairtabad and Lakdikapool from 11.00 a.m. onwards on 16.12.2004. Pursuant to the said application, it appears the remarks were called for from the 3rd respondent-Deputy Commissioner of Police, West Zone, Central Zone and the Additional Commissioner of Police Traffic on 13.12.2004. On receiving the remarks, the permission sought for by the above-mentioned Mr.G.Niranjan was rejected by a memo dated 14.12.2004. The counter-affidavit narrates the events that occurred after rejection of the permission referred to above in a more equivocal manner, which reads as follows:

"4. I submit that the organizer of the rally made an oral representation and expressed his anxiety and urgency to submit a memorandum to the Hon'ble Chief Minister in the Assembly. I humbly submit that considering his request, sanction was accorded by the Joint Commissioner of Police (Co-ordination & Security) to Sri G.Niranjan, Secretary of A.P. Congress Committee for assembly of five more persons and to take out an INTUC Workers Rally on 16-12-2004 between 11.00 a.m and 1.00 p.m from Rajiv Gandhi Statue to Vishweswaraya Statue via., Yashoda Hospital, Kapadia Land and Red Rose Café by imposing certain Conditions. This permission was granted on 15-12-2004 (copy of the same is enclosed which is marked a Annexure-II).

5. I humbly submit that subsequent to the above sanction the organizers represented that the procession cannot go through Kapadia Lane and requested for reconsideration. Accordingly, revised permission was granted by the Joint Commissioner of

Police on 16-12-2004 to take out INTUC Workers rally on 16-12-2004 between 11 a.m. and 1.00 p.m from Ranjiv Gandhi Statue to Vishweshwaraiah Statue via Panjagutta, Vidyut Soudha and Eenadu Office to the following conditions (copy of the same is enclosed which is marked as Annexure III)

1. No inconvenience to the general public and also no obstruction to free flow of traffic is caused.

2. The rally should not create traffic problems.

3. They should not use loud speakers enroute the procession.

4. They should follow all traffic rules.

5. They should go on left side of the road only and keep the remaining Road for Hon'ble Governor's Convoy and Vehicular traffic.

6. They must organize volunteers and carry ropes to maintain the line.

7. They should not deviate from the approved route.

8. They should not carry any type of weapons or lathis.

9. The organizers should comply with the directions given by the Police on duty and co-operative with them in maintenance of Law and Order and in regulation of traffic.

10. They should follow all other instructions from time to time by the Police Officers on duty."

The substance of the above extracted paragraphs of the counter is that notwithstanding the rejection of permission referred to earlier, a permission in fact came to be accorded subsequently permitting the rally/procession as sought by the above-mentioned Mr.G.Niranjan by further proceedings dated 15.12.2004. In fact, the proceedings dated 15.12.2004 of the Joint Commissioner of Police purported to cancel the proceedings dated 14.12.2004 by which the permission was rejected. It appears that noticing this, a Division Bench of this Court before whom the matter was listed earlier, directed the Joint Commissioner of Police who issued the proceedings dated 15.12.2004 to file a personal affidavit in the following terms:

> "Perused the record. It appears from the record that initially permission for taking out the procession to Sri P.Janardhan Reddy, M.L.A., was refused on 14.2.2004. But on 15.12.2004, the Joint Commissioner of Police (Co-ordination and Security), Hyderabad, cancelled that order and granted permission to Mr.JanardhanReddy to take out the procession. Again on 16.12.2004, the Joint Commissioner of Police has passed another order by changing the route of the procession and by this order, Mr.Janardhan Reddy was allowed to take out a procession in the peak hours from the most congested areas of the City. Though in the order of 14.12.2004 when the permission was rejected, reasons were given that permission could not be granted because of traffic problems, but in the order canceling that order and granting permission, no reasons have been given. Therefore, Sri R.Eswara Reddy, I.P.S., who was the Joint Commissioner of Police (Co-ordination and Security), Hyderabad and who passed these orders, should file a personal affidavit stating therein as to what were the reasons to change his decision within 24 hours. The affidavit shall be filed within one week.
>
> List after one week."

In token obedience of the directions of this Court, an affidavit is filed by one Sri R.Eswara Reddy, now working as Deputy Inspector General of Police, Intelligence, A.P., Hyderabad, who was the Joint Commissioner of Police (Coordination and Security), Hyderabad City, as on 15.12.2004. The relevant portion of the affidavit filed by him reads as follows:

> "2. I submit that Sri G.Niranjan, Secretary, A.P. Congress Committee had submitted a representation on 13.12.2004 to the Commissioner of Police, Hyderabad City seeking permission for conducting procession

from Rajiv Gandhi Statue at Somajiguda to reach Assembly via Panjagutta X Roads, Erramanzil, Khairtabad and Lakadikapool. The organizers further requested for permission to organize a rally with INTUC workers under the leadership of the Hon'ble M.L.A. Sri P.Janardhan Reddy. Having examined the representation after obtaining the remarks of DCsP, L&O and officers of Traffic the permission to take out procession was rejected by orders dated:14.12.2004. However, it was observed in the said order that the Organizers can take out procession from Sundaraiah Park to Indira Park. But the Organizers requested to provide permission subject to the conditions to be imposed. Accordingly, permission was given by orders dt:15.12.2004 duly imposing various conditions. As per the said permission the Organizers were permitted to take out the procession from Rajiv Gandhi Statue to Vishweswaraiah Statue via Yashoda Hospital, Kapadia Lane and Red Rose Café. Again the organizers requested for a slight variation in the route of the procession. Accordingly, the route was changed as Rajiv Gandhi Statue to Vishweswaraiah Statue via Panjagutta, Vidyut Soudha, and Eenadu Office instead of from Rajiv Gandhi Statute to Vishweswaraiah Statue via Yashoda Hospital, Kapadia Lane and Red Rose Café. All the officers concerned were informed about these changes for taking necessary action. But the conditions imposed remained as it is. But the Organizers failed to adhere to the conditions imposed resulting in huge traffic disorder and congestion in the route."

The statements made in the affidavit are totally bereft of candour much less compliance with the directions of this Court dated 16.08.2005 to explain the reasons which prompted the issuance of the permission dated 15.12.2004. The request for taking out a procession from the Rajiv Gandhi Statue to the Legislative Assembly was rejected by the Commissioner of Police by his proceedings dated 14.12.2004. While rejecting the permission, the Commissioner, however, suggested that if the organizers so wish, they could take a procession from Sundaraiah Park to Indira Park, the relevant portion of the proceedings dated 14.12.2004 reads as follows:

" The request of Sri G.Niranjan, Secretary, A.P. Congress Committee, Gandhi Bhavan, Hyderabad for Chalo Assembly and taking out INTUC Workers Rally from Rajiv Gandhi Statue on 16-12-2004 via Somajiguda, Panjagutta X Road, Erramanzil, Khairtabad, Lakdikapool, to A.P.Legislative Assembly has been considered and rejected in view of present L&O situation and Traffic problems and on going Assembly Session.

However, if the Secretary, A.P. Congress Committee, Gandhi Bhavan, Hyderabad is agreed to take out a procession from Sundaraiah Park to Indira Park and wants to meet a concerned minister or Chief Minister after taking prior appointment from the concerned minister or Chief Ministers Office, permission will be granted for the procession. Only a delegation of 5 to 10

> members will be allowed to go upto Assembly. They can take prior permission from the D.C.P., Central Zone for the procession as the route falls in Central Zone limits."

It is appalling to see that even after the Commissioner of Police on an appropriate enquiry from all the concerned officers, rejected the permission, the then Joint Commissioner of Police, chose to cancel the orders of the Commissioner dated 14.12.2004 and granted permission as sought for without any further enquiry or application of mind in the matter and contrary to the recommendations of the Officers who are responsible for maintenance of traffic in the route on which the procession was sought to be taken. In spite of an opportunity given by this Court to the 2nd respondent calling upon him to explain the reasons for prompting him to take such a decision, the 2nd respondent does not chose to give any explanation. Obviously, the only inference that can be drawn by this Court is that he has no legally tenable explanation for such a decision and he acted for reasons beyond law and not bonafidely.

It may not be difficult to guess, what reasons prevailed upon the 2nd respondent to grant the permission such as the one granted. In our view, such extraneous considerations ought not weigh with the members of the administration those who are entrusted with statutory duties and responsibilities, more particularly, with the police officers, who are entrusted with the responsibility of maintaining law and order. At the same time, we cannot also ignore the fact that if prominent personalities in public life, seek such permissions, the officer entrusted with the responsibility is always under a tremendous amount of pressure.

The right to takeout a procession is recognized by the Supreme Court as a facet of fundamental right guaranteed to the citizens under Article 19(1)(b) of the Constitution. The Supreme Court in **BABULAL PARATE v THE STATE OF MAHARASHTRA AND OTHERS ,** observed as follows:

> "The right of citizens to take out processions or to hold public meetings flows from the right in Art. 19(1)(b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."

Which principle was reiterated by the Supreme Court in **HIMMAT LAL K.SHAH**

v. COMMISSIONER OF POLICE, AHMEDABAD AND ANOTHER. A Constitution Bench of the Supreme Court approved the observations made in **BABULAL PARATE's case cited (1 supra)**. The Bench reviewed the legal position existing till then in various decisions rendered by the Courts including the Privy Council dealing with the right to takeout a procession (essentially in the context of a religious procession) and came to the conclusion that in India, the right to takeout a religious procession on a public street had always been recognized by the Court subject, of course, to any lawful directions to be issued by the State. The Supreme Court held that the procession is, but an assembly in motion and therefore, there exists a fundamental right under Article 19(1)(b) of the Constitution. It obviously fallows there from that such a right is amenable to reasonable restrictions contemplated imposed by law in the interest of the sovereignty and integrity of Indian or public order.

The Hyderabad City Police Act (hereinafter refereed as 'the Act'), is a law, which authorizes the imposition of reasonable restrictions on the right of the citizens to takeout a procession in the public streets. Under Section 22 of the Act, the Commissioner of City Police, Hyderabad and other Police Officers not below the rank of an Inspector, to give such orders either oral or written, from time to time, as the occasion that required, regarding various matters enumerated under the said Section. Clauses (a) to (f) of Section 22 of the Act, reads as follows:

a. the mode of passing, conduct and behaviour or acts of the processions, or assemblies passing in the streets;

b. prescribe the routes by which and the time at which such processions may or may not pass;

c. prevent obstruction on the occasions of processions and assemblies and in the neighbourhood of any place of worship during the time of public worship and in every case when any street or public place or any place of public resort may be thronged or is likely to be obstructed;

d. maintain order in streets, public places and all other places where public throng;

e. regulate the music or singing in any street or public place

and the beating of kettle-drum, tom-toms, band, drum and the blowing of horns or other like instruments in or near any street or public place;

f. on the written application of any person to the [Commissioner of City Police, Hyderabad] if the [Commissioner of City Police, Hyderabad] is satisfied that music, singing or the noise of the aforesaid instruments is causing inconvenience to any person residing in the neighbourhood on account of his serious illness or to the lawful profession by persons residing in the neighbourhood, the prohibition of its continuance:"

Clause (a) authorizes the issuance of order regulating the conduct and behavior of the procession of assemblies passing in the public streets. Clause (b) enables the regulation of the routes and the timings at which such processions may be taken out or prohibited, etc.

In the absence of any general order prohibiting a procession being taken out on the streets of Hyderabad, it is open for the citizens of this country to takeout a procession at any point of time. But, whether such a right of the citizens, who wish to takeout a procession would be consistent with the rights of the other citizens, who do not participate in the procession, but otherwise entitled to use the streets for passage, is a question, which is required to be decided on the basis of the size of the procession; the time at which that procession is proposed to be taken out; and the route by which such a procession is required to be taken out. As already pointed out, in the absence of any general order under Section 22 of the Act, a procession could be taken out without any limitation on such right and if an officer, acting under Section 22 of the Act, is to take a decision after the procession commenced though the Section authorizes such a decision, it would lead to unnecessary complications and inconvenience to the users of the roads as well as the participants of the procession.

It is in this background, the Commissioner of Hyderabad, thought it fit to ban all rallies and processions in the city of Hyderabad by his order dated 31st December 2004, which is already extracted earlier, excepting two routes specified therein. Even with reference to those two routes, there is nothing in law, which requires a person or an organizer desirous of taking out a

procession, to either intimate or obtain any prior permission from any authority. We are informed by the learned Government Pleader appearing for the State, that there is no requirement of the Rules, to take such prior permission, but as a matter of practice, the Commissioner of Police has always been insisting upon the requirement of taking prior permission, before such a procession is taken out by any person or organizer and only in compliance or recognition of such practice, an application was made by Mr.G. Niranjan, Secretary of the A.P. Congress Committee, seeking permission to takeout a rally, which is the subject matter of controversy in the present taken up case.

We are of the opinion that it is better in the larger interest of the public and maintenance of the order that an appropriate Rule is made prescribing requirement of obtaining prior permission before such a large-scale processions are taken out in the public streets

From the language of Section 22 of the Act, which apparently confers a wide and sweeping discretion in the various officers of the Hyderabad City Police in regulating the processions, it is clear that existence of this discretion, which creates situations such as the one complained of in the present taken up writ petition. There cannot not be any better demonstration of the problem. Within 24 hours after the Commissioner of Police rejected the application of Mr. G.Niranjan, to takeout a procession in a particular route, the Joint Commissioner in exercise of the so-called discretion grants the permission as sought for.

In our view, such discretion must be eliminated and we direct the State to make an appropriate provision for eliminating such discretion, at least in the matter of grant of permissions, and the authority to grant such permission is vested exclusively in one office.

Coming to the decision of the present Police Commissioner of Hyderabad to ban all processions excepting two routes specified in his Proceedings dated 31st December 2004, it appears to us that it is also a decision taken under Section 22 of the Act. Necessarily, it follows that such decision could be varied, altered or reviewed from time to time and we can take a judicial note of

the fact that shortly after the order came to be passed, the regulation was exempted in the case of a procession taken out on 15th June 2005, which once again resulted in a large scale inconvenience to the general public.

We are of the opinion that in order to eliminate such discretion, it is better that an appropriate provision is made in the Act it self fixing the routes through which such large scale processions can be taken out. It is open for the State and its officers to identify the routes having regard to the various complicated factors involved in such decision making process. But, once such identification is completed, there shall not be any deviation on the basis of the political status of the applicant.

Apart from that it is also desirable that whenever permission is accorded for taking out such a large-scale processions exceeding 1000 persons in number, wide publicity shall be given, at least 48 hours prior to the commencement of the said procession to enable the rest of the society to organize its own affairs. The publicity, in our view, shall be best, if it is made through television channels, radio and such other modes which the State deems it appropriate.

It is also desirable that while the procession is on its move, the movement of the procession shall be widely telecast both on the television and radio so that the rest of society can plan its own movements. It is also necessary that the State shall make some appropriate alternative arrangements for the free passage of the traffic, which is normally expected to go by the route on which the procession is permitted and adequate publicity for that alternative routes shall be given atleast 24 hours before the commencement of the procession and such publicity shall be made by the electronic media.

The writ petition is accordingly disposed of.

J.Chelameswar, J

M.Venkateswara Reddy, J

Gs/pgs/mrk

25th November 2005